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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/834,785	04/13/2001	Edward A. Hubbard	NING0008	8392
75671 7590 12/28/2009 Sadler, Breen, Morasch & Colby, ps 422 W. Riverside Ave, Suite 424 Spokane, WA 99201				
EXAMINER				
DALENCOURT, YVES				
ART UNIT		PAPER NUMBER		
2457				
NOTIFICATION DATE		DELIVERY MODE		
12/28/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

usptocorrespondence@sbmc-law.com

Office Action Summary**Application No.**

09/834,785

Applicant(s)

HUBBARD, EDWARD A.

Examiner

YVES DALENCOURT

Art Unit

2457

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 October 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 29-65 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 29-65 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date 10/08/2009

DETAILED ACTION

This office action is responsive to Request for Continued Examination (RCE) filed 10/08/2009.

Claim Objections

Claims 29 and 42 are objected to because of the following informalities: It is suggested to delete "by" (line 4) and insert --- to ---. Appropriate correction is required.

Claim 29 is objected to because of the following informalities: It is suggested to delete " operable to " (line 5) because it has been held that the recitation that an element is "**operable**" to perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 29 and 42 recite the limitation of "said distributed device" in lines 5 and 7. A distributed device has not previously been identified in the claims. There is insufficient antecedent basis for this limitation in the claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 29 – 65 are rejected under 35 U.S.C. 102(e) as being anticipated by
Hartsell et al (US 20020065864; hereinafter Hartsell).

Regarding claim 29, Hartsell discloses a computer-implemented method providing network attached storage (NAS) services (fig. 2) comprising: configuring a distributed processing system by coupling of a multiplicity of distributed devices coupled by a network, wherein each said distributed device has a client agent operable to process a workload for the distributed processing system (paragraphs [0189], [0204], [0236], and [0245], lines 1 - 8), wherein the client agent for a particular said distributed device has a software-based network attached storage (NAS) component configured to assess unused or under-utilized storage resources in selected distributed devices of the multiplicity of distributed devices (paragraphs [0190], [0208], and [0245], lines 8 - 15); representing with the software-based NAS component that the selected distributed devices each comprise a NAS device having an available amount of storage resources related to the unused and under-utilized storage resources for the selected distributed devices (paragraphs [0197], [0210], and [0245 – 0246]); and processing one or more of data storage or access workloads for the distributed processing system by accessing data from or storing data into at least a portion of the available amount of storage resources to provide NAS service to a client device coupled to the network (paragraphs

[0210 – 0211]). Claim 42 adds the limitation of allocating an available amount of unused storage resources in selected distributed devices of the multiplicity of distributed devices (paragraphs [0012], [0097], [0181], and [0262]).

Regarding claim 30, Hartsell discloses the method of claim 29, wherein the client agent for the particular said distributed device enables at least one of the selected distributed devices to function as a stand-alone dedicated NAS device (paragraph [0213]).

Regarding claim 31, Hartsell discloses the method of claim 29, wherein the client agent for the particular said distributed device enables at least one of the selected distributed devices to function as a location distributed device to store location information for data stored by the selected distributed devices (paragraph [0213]).

Regarding claim 32, Hartsell discloses the method of claim 31, wherein the location distributed device is further configured to receive an access request from the client device and direct the client device to data requested on at least one of the selected distributed devices (paragraphs [0214] and [0219]).

Regarding claim 33, Hartsell discloses the method of claim 32, further comprising managing NAS service for said distributed devices at least in part utilizing a centralized server (paragraphs [0215] and [0219]).

Regarding claim 34, Hartsell discloses the method of claim 33, wherein the centralized server is further configured to enable download of the NAS component to the selected distributed devices (paragraphs [0068], [0100], [0286], and [0324]).

Regarding claim 35, Hartsell discloses the method of claim 33, further comprising storing with the centralized server location information for the data stored in the selected distributed devices (paragraphs [0088 - 0089], and [0116]).

Regarding claim 36, Hartsell discloses the method of claim 35, further comprising utilizing the centralized server to receive and route the data for storage to the selected distributed devices based upon individual capabilities of the selected distributed devices indicated in a capabilities database (paragraphs [0089] and [0116]).

Regarding claim 37, Hartsell discloses the method of claim 29, wherein the network comprises the Internet (paragraphs [0005] and [0174]).

Regarding claim 38, Hartsell discloses the method of claim 29, further comprising managing storage resources for the selected distributed devices with a storage priority control that facilitates use of the available amount of storage resources for the selected distributed devices (paragraphs [0233], [0247], and [0302]).

Regarding claim 39, Hartsell discloses the method of claim 38, wherein the storage priority control comprises a parameter selectable by the client device ().

Regarding claim 40, Hartsell discloses the method of claim 39, wherein the storage priority control comprises storage priority level schemes that prioritize one or more of storage or deletion of data (paragraphs [0233], [0247], and [0302]).

Regarding claim 41, Hartsell discloses the method of claim 38, wherein the storage priority control comprises a priority marking directly given to data or files (paragraphs [0233], [0247 - 0248], [0302], and [0321]).

Claims 42 – 65 substantially disclose all the limitations of claims 29 – 41 in system and computer-implemented method with minor modification in the claimed language. The reasons for rejecting claims 29 – 41 apply in claims 42 – 65. Therefore, claims 42 – 65 are rejected for the same reasons.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to YVES DALENCOURT whose telephone number is (571)272-3998. The examiner can normally be reached on M-F 8-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/YVES DALENCOURT/

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Primary Examiner, Art Unit 2457